

*The Hon’ble Sri Justice V.V.S.RAO

+Writ Petition Nos.2522 of 2005 and Batch

%21.11.2008

£ M/s. Siva Krishna Wines, situated at Door No. 4/177, Krishnapuram Village,C.K. Dinne Mandal, Rep. by its Proprietor
S. Nagaraja Reddy, S/o. Pedda Anki Reddy, aged about 37 years, R/o.Mummusiddi Palli Village, Pendli Marri Mandal, Cuddapah District and others.
...Petitioners

Vs.

\$ Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, and others.
... Respondents

!For the petitioners ...Mr.V.R.Reddy Kovvuri and others

^For the Respondents ...GP for Prohibition & Excise

<Gist:

>Head Notes:

? Cases Referred

1. 1992 (2) ALT 314 (DB) = 1992 (2) APLJ 14 (DB)
2. 1997 (6) ALT 788 (DB)
3. 1998 (3) ALD 159 (DB)
4. 2003 (5) ALD 479
5. 2008 (1) ALT 578
6. (2004) 11 SCC 26
7. (2006) 5 SCC 702 = AIR 2006 SC 2652
8. AIR 1975 SC 1121
9. 1993 (2) An.W.R. 601

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIRST DAY OF NOVEMBER
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE MR JUSTICE V.V.S.RAO

-
WRIT PETITION NO : 2522 of 2005

Between:

M/s. Siva Krishna Wines, situated at Door No. 4/177, Krishnapuram Village,C.K. Dinne Mandal, Rep. by its Proprietor S. Nagaraja Reddy, S/o. Pedda Anki Reddy, aged about 37 years, R/o.
Mummusiddi Palli Village, Pendli Marri Mandal, Cuddapah District.

..... PETITIONER

AND

- 1 The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.
- 2 Prohibition and Excise Superintendent, Cuddapah, Cuddapah District.
- 3 Prohibition and Excise Superintendent, Cuddapah, Cuddapah District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the Notice in Rc.No. C1/686/2004 dt. 05-02-2005 issued by the 2nd respondent herein directing the petitioner to pay a sum of Rs. 2,18,750/- within seven days from the date of the receipt of the said notice as arbitrary, illegal, contrary to the provisions of the A.P. Indian Liquor & Foreign Liquor Rules, 1970 and violative of the Fundamental rights guaranteed to the petitioner under Article 14 and 19(1)(g) of the Constitution of India and consequently set aside the same and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.R.REDDY KOVVURI

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 2628 of 2005

Between:

- 1 T.C. Malla Reddy, S/o. T. Rami Reddy, Hindu,
Licencee of R.R. Wines (156/04-05) Buggaletipalli Village, C.K. Dinne Mandal, Kadapa District.
- 2 G. Venkata Subba Reddy, S/o. Venkata Swamy Reddy, Hindu,
of Nagendra Wines (341/04-05) C.K. Dinne Village and Mandal, Kadapa District.

..... PETITIONER(S)

AND

- 1 The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Hyderabad.
- 2 The Superintendent of Prohibition & Excise, Kadapa, Kadapa District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents particularly the 2nd respondent in demanding the petitioners herein to pay Rs. 2,18,750/- each in his Rc.No. C1/452/2004 dated 05-02-2005 and in Rc.No. C1/592/2004 dated 05-02-2005 respectively without issuing any notice as illegla, unjust, arbitrary, without jurisdiction and against the principles of natural justice and against the Rules 25 of A.P., Indian Liquor and Foreign Liquor Rules 1970 and consequently set aside the orders passed by the 2nd respondent in his Rc.No. C1/452/2004 dated 05-02-2005 and Rc. No. C1/592/2004 dated 05-02-2005 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioners: MR.L.J.VEERA REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 3873 of 2005

Between:

K. Hari Prasad, S/o. Sri Obanna,
Ramachandrapuram, Chinta Komma Dinne Mandal, Kadapa District.

..... PETITIONER

AND

- 1 The Commissioner of Prohibition & Excise, Andhra Pradesh, Opp: Exhibition Grounds, Hyderabad.
- 2 The Prohibition & Excise Superintendent, Kadapa, Kadapa District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the notice issued by the 2nd Respondent in Rc.No. C1/669/2004, dt. 05-02-2005 as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to drop all further proceedings in this regard against the petitioner and to pass such other order or orders as this Hon'ble Court may deem fit in the circumstances of the case.

Counsel for the Petitioners:MR.N.SIVA REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 4006 of 2005

Between:

M/s.Rama Krishna Wines, situated at Door No.K/294, C.K.Dinne C.K.Dinne Mandal,
Cuddapah District
rep.by its Prop. C.Rama Krishna Reddy, S/o.Nagamalla Reddy, R/o.2/84,
Alankanpalli village, Cuddapah Mandal, Cuddapah Dist.

..... PETITIONER

AND

- 1 The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.
- 2 Prohibition and Excise Superintendent, Cuddapah, Cuddapah District.
- 3 Prohibition and Excise Inspector, Cuddapah, Cuddapah District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the Notice in Rc.No.C1/593/2004, dated 05-02-2005 issued by the 2nd respondent herein directing the petitioner to pay a sum of Rs.2,18,750/- within seven days from the date of the receipt of the said notice as arbitrary, illegal, contrary to the provisions of the A.P. Indian Liquor & Foreign Liquor Rules, 1970 and violative of the fundamental rights guaranteed to the petitioner under Articles 14 and 19 (1)(g) of the Constitution of India and consequently set aside the same and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.R.REDDY KOVVURI

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 4739 of 2005

Between:

Reddy Veerabhadra Rao, S/o. Govinda Rao,
Door No. 5-115/2, ADB Road, Atchampet Junction, Kakinada Rural Mandal, East
Godavari District.

..... PETITIONER

AND

- 1 The Commissioner for Prohibition and Excise, Government of Andhra Pradesh, Hyderabad.
- 2 The Prohibition and Excise Superintendent, Kakinada, East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the order in Rc.No. B1/55/2005, dated 10-2-2005 of the 2nd respondent, as arbitrary, illegal, violative of the principles of natural justice, Fundamental Right guaranteed under Article 19(1)(g) of the Constitution of India, violative of the A.P. Excise Act, 1968, apart from being violative of the A.P. Indian Liquor and Foreign Liquor Rules and consequently set-aside the same and pass such other order or ordrs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.C.V.R.RUDRA PRASAD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 4848 of 2005

Between:

- 1 Smt.N.Prabhavati W/o.Kasiviswanath
M/s Sai Prabha Wines L.H.S.Peta, Kakinada Rural Mandal, East Godavari Dist.
- 2 G.Challa Rao, S/o.Gurraju
M/s Sai Prabha Wines L.H.S.Peta, Kakinada Rural Mandal, East Godavari Dist.

..... PETITIONER(S)

AND

- 1 The Commissioner for Prohibition and Excise Government of Andhra Pradesh, Hyderabad.
- 2 The Prohibition and Excise Superintendent East Godavari District, Kakinada.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 2nd respondent passed in Rc.No.B1/55/2005 dt.10.2.2005 as illegal arbitrary and one without jurisdictionand pass such other or further orders.

Counsel for the Petitioners: MR.O.MANOHER REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 6390 of 2005

Between:

- K. Venkata Rao, S/o. Gani Raju,
Thimmapuram, Kakinada Rural Mandal, East Godavari Dsitric.

..... PETITIONER

AND

- 1 The Commissioner of Prohibition and Excise, Andhra Pradesh, Opp: Exhibition Grounds, Hyderabad.
- 2 The Prohibition and Excise Superitendent, Kakinada, East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the notice issued by the 2nd respondent in Rc.No. B1/55/2005, dated 10-02-05 as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to drop all further proceedings in this regard against the Petitioenr and to pass such other order or orders

Counsel for the Petitioner:MR.N.SIVA REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 6489 of 2005

Between:

- 1 V. Srinivasulu S/o. Ramaiah
M/s. Sri Vljaya Wines, R/o. Kovur, Nellore District.
- 2 K. Subba Rao S/o. Penchalaiah
M/s. Kovur Wines, R/o. Kovur, Nellore District.
- 3 K. Hari Gopal Reddy S/o. Raja Gopal Reddy
M/s.Swathi Wines, R/o.Padugupadu, Kovur Mandal, Nellore District.
- 4 A. Venkat Raju S/o. Subbramanyam Raju
M/s. Akhil Wines, R/o. Kovur, Nellore District.
- 5 V. Malyadri Laxmi Narasimha Rao S/o. Kondaiah
M/s. Laxmi Narasimha Wines, R/o. Kovur, Nellore District.
- 6 S. Koteswar Rao S/o. Balaiah
M/s. Chandra Wines, R/o. Kovur, Nellore District.
- 7 K. Venkata Sessaiah S/o. Rangaiah
M/s. Rock Wines, R/o. Inamadugu Village, Kovur Mandal, Nellore District.
- 8 D. Vara Lakshamma W/o. Balasundaram
M/s. Varalakshmi Wines, R/o Padugupadu Village, Kovur Mandal, Nellore District.
- 9 Ch. Babu Rao S/o. Purushotam
M/s. Saibaba Wines, R/o. Kovur Mandal, Nellore District.
- 10 Y. Babi Reddy S/o. Pulla Reddy
M/s. Harihara Wines, R/o. Kakupally, Nellore Rural Mandal,
Nellore District.
- 11 N. Mallikarjuna S/o. Venkataramanayya,
M/s. Sri Balaji Wines, R/o. Navala Gardens, Nellore Rural Mandal,
Nellore District.
- 12 A. Sanjeeva Raju S/o. Sanjeeva Raju
M/s. Surya Wines, R/o. Gummaladibba, Kovur Mandal, Nellore District.
- 13 P. Subbayya S/o. Sankarayya
M/s. Hema Wines, R/o. Pedacherukuru,Nellore Rural Mandal, Nellore District.
- 14 L. Parameswara Reddy S/o. Sunku Reddy
M/s. Vijayalaxmi Wines, R/o. Kothakaluva, Nellore Rural Mandal, Nellore District.
- 15 M. Dayakar S/o. Ramanaiah,
M/s.Kalyani Wines, R/o. Narayanareddypeta,
Nellore Rural Mandal, Nellore District.
- 16 B. Venkateswarlu S/o. Chinnayya
M/s. Giri Wines, R/o. Chemudugunta Village,
Nellore District.
- 17 M. Rammurthy S/o. Venkaiah
M/s. R.R. Wines, R/o. Allipuram, Nellore Rural Mandal,
Nellore District.

..... PETITIONER(S)

AND

- 1 The Commissioner for Prohibition and Excise, Government of Andhra Pradesh,
Hyderabad.
- 2 The Prohibition and Excise, Superintendent , Nellore.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ of Mandamus or any other appropriate writ or direction declaring the action of the 2nd respondent in insisting the petitioners to pay the differential licence fee i.e, Rs. 2,80,480/- and Rs. 3,52,398/-on the ground that Nellore Municipality has been upgraded into municipal Corporation with effect from 8-10-2004 as illegal arbitrary and one without Jurisdiction and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.

Counsel for the Petitioners:MR.A.JAGANNATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 6667 of 2005

Between:

M/s. SSR wines, Penuguduru Village (Karapa Mandal),
E.G. Dist., Licencee Masa Nageswar Rao S/o. Ratnam, aged about 35 yrs,
Occ: Business, License No. 542/2004-2005.

..... PETITIONER

AND

- 1 The Commissioner, Prohibition & Excise, Government of Andhra Pradesh, Hyderabad.
- 2 The Excise Superintendent,, Prohibition & Excise, E.G. District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus suspending the proceedings of the second respondent in Rc.No. B1/55/2005 dt. 10-2-2005 and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.VINAY KAMISSETTY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 7072 of 2005

Between:

- 1 N. Sreenivasulu, S/o. Jayaramaiah,
Hema Wines Dhanalakshmipuram, Vaviletipadu, Nell9ore,
rural Mandal, Nellore District.
- 2 P. Prabhakar, S/o. Penchalaiah,
Kalyani Wines, Kothur, Nellore Rural Mandal,
Nellore District.
- 3 P. Prabhakar Reddy, S/o. Narayana Reddy,
Prabha Wines, Varigonda, T.P. Gudur Mandal, Nellore District.

..... PETITIONER(S)

AND

- 1 The Commissioner of Prohibition & Excise, Governmen of Andhra Pradesh, Hyderabad.
- 2 The Prohibition and Excise Superintendent, Nellore.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, Writ or direction more particularly a Writ of Mandamus Under Article 226 of Constitution of India, declaring the action of the 2nd respondent in insisting the Petitioners to pay the differential licence fee i.e. Rs. 2,80,480/- and Rx. 3,52,398/- on the ground that Nellore Municipality has been upgraded into Municipal Corporation with effect from 8-10-2004 by issuing the iimpugned Proceedings by 2nd respondent in proceedings Rc.No. 211/2003/A2, dated -26-02-2005, Rc.No. 274/2003/A2 dated 26-02-2005 and Rc.no. 351/2003/A2 dated 26-02-2005 as illegal, arbitrary and without jurisdiction and set aside the same and pass such order are orders that the Honourable Court may deem fit and proper in the interests of justice.

Counsel for the Petitioners: MR.P.SRIDHAR REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 8744 of 2005

Between:

- 1 M/s. Sri Rama Wines, Teegalaguttapally, Karimnagar District,
Rep. by J. Ranga Rao S/o. Hanumantha Rao.
- 2 M/s. Saibaba Wines, Durshed, Karimnagar District,
Rep. by K. Hanumantha Rao S/o. Tirupathi Rao.
- 3 M/s. SaiWines, Gopalapur, Karimnagar District,
Rep. by K. Tirupathi Rao. S/o. Narayana rao
- 4 M/s. Srinivasa Wines, Alugunoor, Karimnagar District,
R/o. P. Bhaskar Reddy S/o. Venkat Narasimha Reddy.
- 5 M/s. Renuka Wines, Mankondur, Karimnagar District,
Rep. by T. Shekar S/o. Komuraiah.
- 6 M/s. Alugunoor Wines, Alugunoor, Karimnagar District,
Rep. by T. Rajamouli, S/o. Narsaiah,
- 7 M/s. A.1 Wines, Alugunoor, Karimnagar District,
Rep. by Ch. Ramesh Reddy S/o. Linga Reddy.
- 8 M/s. Tirumala Wines, Kothapally (H) Karimnagar District,
Rep. by G. Satyanarayana S/o. Lakshmi Rajyam.
- 9 M/s. S.R.R. Wines, Chintakuntla, Karimnagar District,
Rep. by G./ Sudhakar Goud S/o. Hanuma Goud.

..... PETITIONER(S)

AND

- 1 The Prohibition and Excise Superintendent, Karimnagar, Karimnagar District.
- 2 The Commissioner of Prohibition and Excise, Government of Andhra PRadesh,
Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ, Order or direction more particularly one in nature of WRIT OF MANDAMUS to directing the respondents to permit the petitioner's to continue to run their respective IL-24 retail licensee shops as per the licensee fees already received by 31-3-2005 without insisting to pay differential licensee fee consequent to formation of Karimnagar Municipal Corporation, by holding the action of the respondents in demanding to pay differentiall licensee fee and threatening petitioners to close the shops without issuing any orders as per rules is as illegal, arbitrary, discriminatory and opposed to all principles of equity, justice and fair play and pass such ohter order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.CH.JAGANNADHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 9629 of 2005

Between:

- 1 Tuta Srinivasa Rao, S/o. Nageswara Rao,
R/o. Vhataparru Village, Eluru Mandal,
West Godavari District. Licencee of M/s. Anusha Wines.
- 2 K.V.Subba Rao, s/o. Koteswara Rao,
r/o. Madepalli Village. Eluru Mandal,
West Godavari District. Licencee of M/s. K.V.R.Wines.
- 3 P.Rama Mohan Rao, S/o. Venkaiah,
R/o. Jalipudi Village, Eluru Mandal,
West Godavari District. Licencee of M/s. Anusha Wines.
- 4 B.Venkateswara Rao, s/o. Saidulu,
R/o. Poturu Village, Peddapadu Mandal,
West Godavari District. Licencee of M/s. Vijaya Durga Wines
- 5 K.Venkateswara Rao, s/o. Surya Rao,
R/o. Malkapuram Village, Eluru Mandal,

- West Godavari District. Licencee of M/s. Sri Durga Wines.
- 6 P.Satyanarayana, S/o. Laxmana Swamy,
R/o. Ponangi, Eluru Mandal,
West Godavari District. Licencee of M/s. Vijaya Lakshmi Wines.
- 7 E.Sumathi, W/o. Ashok Kumar,
R/o. Kotturu Village, Eluru Mandal,
West Godavari District. Licencee of M/s. M.G.R. Wines.
- 8 T.Rama Krishna Prakash, S/o. Madhusudhan Rao,
R/o. Vatluru Village, Eluru Mandal,
West Godavari District. Licencee of M/s. Chilaka Wines.
- 9 A.Satish Chowdary, S/o. Murali Krishna,
R/o. Vatluru Village, Eluru Mandal,
West Godavari District. Licencee of M/s. Satya Krishna Wines.

..... PETITIONER(S)

AND

- 1 The Commissioner Prohibition & Excise, Government of Andhra Pradesh,
Hyderabad.
- 2 The Excise Superintendent, Prohibition & Excise, Eluru,
West Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an order, writ or direction more particularly in the nature of writ of Mandamus declaring the action of the 2nd Respondent in insisting the petitioners to pay the differential licence fee i.e. Rs. 1,22,597/- and Rs. 87,569/- on the ground that periphery limits of the Eluru Municipal Corporation is extended upto 5 Kms. as illegal, arbitrary and one without jurisdiction, and pass such other are orders that the Honourable Court may deem fit and proper in the interest of justice.

Counsel for the Petitioners: MR.A.JAGANNATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 11103 of 2005

Between:
Keeravani Wines, Kothapally, Rep. by G. Tirupathi
Karimnagar District.

..... PETITIONER

AND

- 1 The Prohibition and Excise Superintendent, Karimnagar, Karimnagar District.
- 2 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh,
Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ, order or direction more particularly one in the nature of Writ of MANDAMUS to declaring the action of the 1st respondent in demanding the petitioner to pay deferential enhanced licensee fee of Rs. 93,750/- in proceeding Rc.No. 461/2005/P &EX/A11 dt. 4-5-2005 without issuing any notice as illegal, unjust, without jurisdiction and contrary to the Rule 25 of A.P. Indian Liquor and Foreign Liquor Rules 1970 and consequently set aside the impugned proceeding dt. 4-5-2005 of the 1st Respondent and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.CH.JAGANNADHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

WRIT PETITION NO : 12771 of 2005

Between:

M/s. Vinod Wines, Teegalaguttapalli, Represented by D. Sagar,
S/o. Kistaiah, Aged 22 years, Occ : Business, Karimnagar, Karimnagar District.

..... PETITIONER

AND

- 1 The Prohibition and Excise Superintendent, Karimnagar, Karimnagar District.
- 2 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ, order or direction more particularly one in the WRIT OF MANDAMUS to directing the respondents to permit the petitioner to continue to run hi sIL 24 License shop as per the licensee fees already received by 02-4-2005 without insisting to pay differential licensee fee of Rs. 1,21,250/- is as illegal, arbitrary, discriminatory and opposed to all principles of equity, justice and fair play and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.CH.JAGANNADHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

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The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2522, 2628, 3873, 4006, 4739, 4848, 6390, 6489, 6667, 7072, 8744,
9629, 11103 AND 12771 of 2005

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COMMON ORDER:

Background of the cases

In this batch of writ petitions, petitioners were granted licence in Form IL-24 for the year 2004-2005 under Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 (hereafter called, the Rules) and provisions of Andhra Pradesh Excise Act, 1968 (for brevity, Excise Act). When licences were granted, shops were situated in villages at some distance from municipality governed by Andhra Pradesh Municipalities Act, 1965 (Municipalities Act, for brevity). Some time in 2004, when licences were in force, places where shops were licensed to sell Indian liquor came into belt of 5 KMs from periphery of Municipal Corporations governed by Andhra Pradesh Municipal Corporations Act, 1955 (hereafter called, Corporations Act). Therefore, concerned licensing authority issued notices demanding differential licence fee for the period during which the area or place where the shop is licensed came within Corporation peripheral area. Such notices were issued purportedly in accordance with Rule 25 read with Schedule appended to the Rules. These notices are challenged in these writ petitions.

The core controversy in these cases is already indicated above and therefore, it is not necessary to elaborate the background of each case again except making a reference as and when necessary if there are special facts and circumstances in a given case. However, particulars of the area where the shop was licensed, its location and the date with effect from which Municipal Corporation was notified under Corporations Act, are shown in the following table.

Petition No.	Place/area where licence was given	Nature of area	Fee Rs. in lakhs when licence was granted	Date from which Corporation was established	Present location	Licence fee Rs. in lakhs
122/2005	Krishnapuram, C.K.Dinne Mandal, Kadapa Dist	Village	3.00	13.11.2004	Belt area of 5 KMs	8.25
128/2005	Buggaletipalli Village, C.K.Dinne Mandal, Kadapa Dist	Village	3.00	13.11.2004	-do-	8.25
173/2005	Ramachandrapuram, C.K.Dinne Mandal, Kadapa Dist	Village	3.00	13.11.2004	-do-	8.25
106/2005	C.K.Dinne, C.K.Dinne Mandal, Kadapa Dist	Village	3.00	13.11.2004	-do-	8.25
139/2005	Timmapuram Village, Kakinada Rural Mandal	Village	3.00	06.01.2005	-do-	8.25
148/2005	K a k i n a d a Rural Mandal	Municipality	3.00	06.01.2005	Municipal Corporation	8.25
190/2005	Timmapuram Village, Kakinada Rural Mandal	Village	3.00	06.01.2005	Belt area of 5 KMs	8.25
189/2005	Nellore Rural Mandal	Municipality	3.00/4.50	08.10.2004	Municipal Corporation	10.35
167/2005	Penuguduru Village, Karapa Mandal, E.G.Dist	Village	3.00	06.01.2005	Belt area of 5 KMs	8.25
172/2005	Nellore Rural Mandal	Municipality	3.00/4.50	08.10.2004	Municipal Corporation	10.35
144/2005	Karimnagar District	Municipality	3.00	07.04.2005	Belt area of 5 KMs	8.25
129/2005	Eluru	Municipality	3.00	07.04.2005	-do-	8.25
103/2005	K o t h a p a l l y village, Karimnagar Dist	Municipality	4.50	07.04.2005	-do-	8.25
1771/2005	Teegalaguttapalli village, Karimnagar	Municipality	3.00	07.04.2005	-do-	8.25

The uncontroverted fact situation gives rise to point for consideration as to whether the authorities can claim differential licence fee without there being amendment to Rule 25 of the Rules to collect licence fee after place of shop like village came within peripheral area of Municipal Corporation. Learned counsel for petitioners and learned Government Pleader made elaborate submissions. They also relied on **M/s.Delux Bar v Excise Superintendent**^[1], **Sri Rama Wines v Excise Superintendent**^[2], **Meka Nageswara Rao v Deputy Commissioner of Excise, Guntur**^[3], **Tirumala Balaji Wines v Commissioner of Prohibition and Excise, Hyderabad**^[4] and **B.Venkataramana v Commissioner of Prohibition & Excise**^[5].

Relevant Law and Legal Principles

The right to deal with intoxicating substances – manufacturing, marketing and selling; is exclusive to sovereign State. Either in common law or in civil law, no citizen can claim a right or privilege to deal with intoxicating substances. It is *res extra commercium*. But when sovereign State decides to manufacture, market and sell intoxicating substances, it has two options. It may actively and directly involve in such business or it may part with privilege of

manufacturing, marketing and selling, to the citizens by collecting a fee in addition to excise duties. No fundamental right under Article 19(1)(g) of Constitution of India – right to practise profession, or carrying on any occupation, trade or business; can be claimed nor enforced in Court. It does not mean that the fundamental right of every citizen for equality before law and equal protection of laws is unavailable (See **State of Punjab v Devans Modern Breweries Limited**^[6] and **Kuldeep Singh v Government of NCT of Delhi**^[7]).

Excise Act was enacted to regulate production, manufacture, possession, transport, purchase and sale of intoxicating liquors and drugs and levy of duties of excise and countervailing duties on alcoholic liquors for human consumption in State of Andhra Pradesh. Like any other law, Excise Act is also intended to ensure a rationale and unarbitrary implementation of legislative policy to part with privilege in dealing with intoxicants. Therefore, if it is shown that the impugned action is arbitrary or irrational, it would certainly violate Article 14 of Constitution of India. In the background of the case, the burden lies on the State to prove that the claim for differential fee does not fall foul of Article 14 of Constitution of India. It is not necessary to refer to all provisions of Excise Act in Chapter IV which deals with regulation of manufacture, possession and sale of intoxicating liquors. Suffice it to refer to Sections 28 and 29 of the Excise Act. Section 28 mandates that every permit/licence shall be issued on payment of such fees, for such period, subject to such restrictions and conditions, and shall be in such form prescribed. Section 29 of the Excise Act empowers licensing authority to require the licensee to give security for the observance of the terms of licence and to execute counterpart agreement in conformity with the tenor of licence. As in all statutes ‘prescribed’ means prescribed by the Rules (Section 2(26) of the Excise Act).

In exercise of powers conferred on them under Section 72 read with Sections 9, 11 to 15 and 28 of the Excise Act, Government promulgated Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970. For the purpose of this case, reference need to be made to Rules 23, 24 and 25 of the Rules and Schedule to the Rules, because there is no controversy with regard to other aspects related to granting licences. Before noticing this trinity Rules, a mention may be made with regard to period of licence. Rule 3(c) of the Rules, as it existed – defined ‘Excise Year’ as period of twelve months commencing on 1st day of October of the year and ending with 30th day of September of following year. This was omitted by an amendment made vide orders of the Government in G.O.Ms.No.269, dated 01.04.1997. By the same Government Order, Rule 3(ee) was inserted defining ‘Lease Year’, which means a period of twelve months beginning from first day of April of the year and ending with 31st March of the following year.

Rule 23 of the Rules specifies various categories of licences that have to be obtained for sale of foreign liquor and Indian liquor. It also prescribes forms of licences, quantity of liquor and manner in which it has to be sold under each licence. Rule 24 of the Rules as amended by G.O.Ms.No.384, dated 28.03.2005 speaks of period of licence and commencement of business and it reads as under.

24. Period of the Licence and commencement of Business:-

(1) Every licence referred to in Rule 23 other than the occasional licence in Form IL-22 or Special Licence shall be valid for one year commencing from 1st April ending with 31st March of the succeeding year, or part thereof, subject to payment of Licence Fee or proportionate licence Fee as prescribed in the Schedule appended to these rules issued under Rule 25;

Provided that the licence issued on or after 1st April shall be valid upto the end of the 31st March of the succeeding year, or till such date upto which the licence is granted, whichever is earlier;

Provided further that every Licensee shall commence his business from 1st April or such other date as may be specified in the licence and shall keep the shop open every day during the hours fixed till the expiry of the term of licence with sufficient stock of liquor unless the closure of the shop is ordered by the competent authority for the period specified.

(2) Omitted

Needless to mention that every licence referred to in Rule 23 of the Rules other than occasional licence shall be valid for a period of one year commencing from first day of April ending with 31st March of succeeding year. It may be noted that prior to the amendment, the Rules provided that every licence other than occasional licence in Form IL-22 or special licence shall be valid for block period of five excise years i.e., first October of the year and ending with 30th September of the following year. The proviso to Rule 24(1) of the Rules also clarifies that the licence issued on or after first April shall be valid upto the end of 31st March of succeeding year or till such date upto which licence is granted, whichever is earlier. Second proviso obliges licensee to commence business from first April and keep shop open everyday during fixed hours till the expiry of term of licence unless closure of the shop is ordered by competent authority. Rule 25, insofar as it is relevant, reads as under.

25.Licence fees:-

(1) The annual licence fee for each of the licences except IL.17, IL.24, IL-24-B and IL-24G referred to in Rule 23, shall be as amended, from time to time, at the rates as shown in the schedule appended to these rules. The annual licence fee for a lease year shall be paid before the commencement of the lease year to which it relates in one lump sum:

Provided that the annual licence fee for the licences in Form IL.17 referred to in Rule 23 shall be as amended from time to time, at the rates shown in the Schedules appended to these rules. The annual licence fee for a lease year shall be paid before commencement of the lease year to which it relates in one lumpsum or in two equal instalments or in a manner as notified from time to time. Where the licence is issued before the 31st May of the lease year, the first instalment i.e., half of the annual licence fee shall be paid into the Government Treasury through a challan before the issue of licence together with a Bank Guarantee from a Scheduled Bank situated in Andhra Pradesh in Form IL 30-A or fixed Deposit Receipt/National Savings Certificate for an amount equal to half of the annual licence fee. The Bank Guarantee shall be valid for a period of seven months. The 2nd instalment of the annual licence fee i.e., half of the annual licence fee, shall be remitted in to the Government Treasury on or before 1st October of the lease year, failing which the licence shall stand cancelled automatically on the expiry of such due date and subject to the conditions prescribed in Form IL 28-B;

Provided further that the licensees of IL-17 (Bar) licences shall be permitted to pay 1/3rd of the annual licence fee, together with a Bank Guarantee of a Scheduled Bank situated in Andhra Pradesh in Form IL-30-A or Fixed Deposit Receipt or National Saving Certificate for an amount equal to 2/3rd of the annual licence fee. The 2nd and 3rd instalments of the annual licence fee of 1/3rd each shall be remitted on or before 1st July and 1st October of the lease year respectively, subject to payment of interest @ 18% per annum on 1/6th of annual licence fee from 1st April to 1st July of the lease year.

In the event of failure to remit the instalment on due date, the licence shall stand cancelled automatically and all the deposits/Bank Guarantees shall stand forfeited to the Government.

(9): The annual licence fee for the licences in Form IL 24, Form IL-24B and Form IL 24-G referred to in Rule 23 shall be amended, from time to time, at the rates as shown in the Schedule appended to these rules. The annual licence fee for a lease year shall be paid before the commencement of the lease year to which it relates in one lumpsum or in three equal instalments or in a manner as notified from time to time. Where the licence is issued before the 31st May of the lease year, the first instalment i.e., 1/3rd of the annual licence fee shall be paid into the Government Treasury through a challan before the issue of licence, together with a Bank Guarantee of a Scheduled Bank situated in Andhra Pradesh in Form IL 30 or Fixed Deposit Receipt/National Savings Certificate for an amount equal to 2/3rd of the annual licence fee. The Bank Guarantee shall be valid for a period of 7 months. The 2nd and 3rd instalment of the annual licence fee of 1/3rd each shall be remitted into Government Treasury on or before 1st July and 1st October of the lease year respectively in such case, the Fixed Deposit Receipt or Bank Guarantee or National Savings Certificate proportionate to that amount shall be returned to the licensee otherwise such deposits or Bank guarantees shall be adjusted against the instalments

of licence fee due on 1st July and 1st October respectively:

Provided that in respect of the licences granted other than occasional or special licences during the month in a lease year, the licence fee shall be proportionately collected from first of the month in which the licence is granted. For example, if the licence is granted in the month of May, the licence fee payable shall be for eleven months of the annual licence fee of that year;

Provided further that if the licences are granted in June, July, August and September of the lease year, the applicants for licences have to pay 50% of the licence fee before the issue of licences together with a Bank Guarantee; Fixed Deposit Receipt/National Savings Certificate for a like amount valid for a period of 7 months and the remaining 50% of the licence fee has to be remitted into Government Treasury on or before first October of the lease year and if the licences are granted in October, November, December, January, February and March of the lease year, the applicants for licences have to pay the licence fee in one lumpsum before the issue of licence.

As per Rule 25(1) of the Rules, the annual licence fee for each of the licences referred to in Rule 23 - except licences in Form IL-17, IL-24, IL-24-B and IL-24-G; shall be as amended from time to time at the rates as shown in Schedule appended to the Rules. The sub-rule further provides that annual licence fee for the lease year shall be paid before the commencement of lease year in lumpsum. The two provisos under Rule 25(1) of the Rules deal with annual licence fee for licence in IL-17 and sub-rule 9 of Rule 25 of the Rules deals with payment of annual licence fee for licence in Form IL-24. As per sub-rule, the licence fee shall be as amended from time to time at the rate shown in the schedule appended to the Rules and shall be paid before the commencement of lease year. However, if licence is issued before 31st May of the lease year, the first instalment of one-third of annual licence fee shall be paid before the issue of licence and licensee shall have to furnish bank guarantee of a scheduled bank in Form IL-30 or furnish Fixed Deposit Receipt/National Savings Certificate for an amount equal to two-third of annual licence fee. Such bank guarantee shall be valid for a period of seven months, which shall be returned to licensee or adjusted against instalments of licence fee due subsequently.

Before noticing relevant licence fee structure for licence in Form IL-24, conspectus of Rules 23 to 25 of the Rules may be noticed. A licence under the Rules including retail licence in Form IL-24 is issued for a period of one lease year from 1st April of the year and ending with 31st March of the following year. Such licence shall be valid for one year subject to payment of licence fee. A licensee of Form IL-24 licence has to pay annual licence fee for entire lease year and depending on the situation, he can pay one-third annual licence fee before issue of licence and furnish bank guarantee for seven months which shall be adjusted in case of default on the part of licensee. The licence fee shall be at the rates shown in the Schedule appended to and which may be amended from time to time. It may be added that if no such amendment is made by Government in exercise of their powers under Section 72 read with Section 28 of the Excise Act, licence fee payable for IL-24 licence shall be the fees at rates shown in Schedule as it existed at the time of grant of licence. As already noticed, licence fee for different licences granted under the Rules shall be at the rates shown in the Schedule appended to the Rules. What is the position of Schedules vis-à-vis the provisions of the Statute? The principle is well settled. Instead of referring to various decisions on this point, suffice to borrow the following passage from G.P.Singh's 'Principles of Statutory Interpretation' (Tenth Edition, 2006).

Schedules appended to statutes form part of the statute. They are added towards the end and their use is made to avoid encumbering the sections in the statute with matters of excessive detail. They often contain details and forms for working out the policy underlying the sections of the statute, and at times they contain transitory provisions which remain in force till the main provisions of the statute are brought into operation. Occasionally they contain such rules and forms which can be suitably amended according to local or changing conditions by process simpler than the normal one required for amending other parts of the statute. **The division of a statute into sections and Schedules is a mere matter of convenience and a Schedule therefore may contain substantive enactment which may even go**

beyond the scope of a section to which the Schedule may appear to be connected by its heading. In such a case a clear positive provision in a Schedule may be held to prevail over the *prima facie* indication furnished by its heading and the purpose of the Schedule contained in the Act. However, if the language is not so clear, the provision in the Schedule may be construed as confined to the purpose indicated by its heading and the section in the statute to which it appears connected. In case of conflict between the body of the Act and the Schedule the former prevails.

(emphasis supplied)

The Schedule appended to Rules forms part of the Rules and contains the rates of licence fee payable for each of the licences granted under the Rules. In this Judgment, the controversy is about fee for the licence in IL-24. Therefore, the relevant entry providing for licence fee may be referred to.

Sl. No.	Category of Licence	Licence Fee
Sl.Nos.1 to 7 are omitted in this Order.		
8.	IL.24 Retail licence for the sale of all kinds of Indian Liquor, Foreign Liquor and/or Beer not to be consumed on the premises (Off Licence)	(a) Rs.3,00,000/- (Rupees Three lakhs only) per year in places where the population of the Revenue village and its hamlets/Municipality/Municipal Corporation does not exceed 10,000; (b) Rs.4.50,000/- (Rupees Four lakhs Fifty thousand only) per year in places where the population of the Revenue village and its hamlets/Municipality/Municipal Corporation is above 10,000 but does not exceed 50,000; (c) Rs.8,25,000/- (Rupees Eight lakhs twenty five thousand only) per year in places where the population of the revenue village and its hamlets/ Municipality/ Municipal Corporation is above 50,000 but does not exceed 3,00,000; (d) Rs.10,35,000/- (Rupees ten lakhs thirty five thousand only) per year in places where the population of the Revenue village and its hamlets/Municipality/Municipal Corporation is above 3,00,000 but does not exceed 7,00,000; and (e) Rs.12,30,000/- (Rupees twelve lakhs thirty thousands only) per year in places where the population of the Revenue village and its hamlets/Municipality/Municipal Corporation is above 7,00,000/-; Provided that the licence fee in respect of retail shops situated within a belt of 5 Kms from the periphery of Municipal Corporation shall also be at the rate of fee of retail shops situated within the limits of such Corporation; Provided further that the licence fee in respect of retail shop situated within a belt of 2 Kms from the periphery of Municipalities, notified areas and village/Town/City with population of 25,000 and above, shall also be at the rate of licence fee of retail shops situated within the limits of such Municipalities, Notified areas and villages; Provided also that where a retail shop falls within the belt area of a Corporation as well as a Municipality, Notified area and village/town/city with a population of 25,000 and above, the licence fee payable shall be the fee applicable to the Retail shop situated in the belt area of the Corporation.
Sl.Nos.9 to 14 are omitted in this Order.		
Explanation:- In respect of licences granted for a less period in a lease year, the licence fee shall be chargeable proportionately as defined in Rule 3(ff)		

For the sake of convenience and better understanding, it may be mentioned that depending on population of village or Municipality or Municipal Corporation, the licence fee varies. If population is less than 10,000, the licence fee is Rs.3.00 lakhs; if population is between 10,000 and 50,000, the licence fee is Rs.4.50 lakhs; if population is between 50,000 and 3,00,000, licence fee is Rs.8.25 lakhs; if population is between 3,00,000 and 7,00,000, licence fee is Rs.10.35 lakhs; and if population exceeds 7,00,000, licence fee shall be

Rs.12.30 lakhs per year. Thus, there are five slab rates for different human habitats depending on area population. The licence fee payable for IL-24 retail licence depending on the population of village/ Municipality/Municipal Corporation does not give rise to any difficulty. But the Rule making authority has also prescribed same rates of licence fee for retail shops situated within given distance from the periphery of Municipality or Municipal Corporation by creating fiction in three provisos below the prescribed licence fee. As per first proviso (see above table), if retail shop is situated within belt of 5 KMs from the periphery of Municipal Corporation, the licence fee shall also be at the rate of fee of retail shops situated within the limits of such Corporation. Similarly, if retail shop is situated within a belt of 2 KMs from the periphery of Municipality, notified area and village/town/city with population of 25,000 and above shall also be at the rate of licence fee of retail shops situated within such areas. What would be the position with regard to the retail shop, which is situated outside such belt of 2 KMs within the periphery of a Municipality, which is later constituted as a Municipal Corporation? This is the core issue in these cases. Somewhat similar issues have come up before this Court in earlier cases. These decisions, therefore, may be noticed, after referring to a decision of Hon'ble Supreme Court.

PRECEDENTS

In **Har Shankar v Deputy Excise and Taxation Commissioner**^[8], Constitution Bench of Supreme Court considered controversy about the power of Government to levy and realise licence fee either through medium of auctions or on scales fixed under the Rules. The appellant therein who was a successful bidder in the auctions conducted for granting the right to sell country liquor, could not meet the obligations under the conditions of licence. The State Government demanded payment and threatened to cancel licence. The appellant's attempt to get redressal before the High Court, failed. Before Supreme Court it was *inter alia* contended that the licence fee collected has no relationship with the services rendered in the licence and therefore, it is not a fee in the true sense and that the same cannot be justified as excess duty. The Constitution Bench did not accept the submission. It was ruled thus:

It is true that the amendments under which the appellants have been called upon to pay fixed fees were made after the licences were renewed. But the licences, though renewed in January 1968, were to be effective from April 1, 1968. The amendments having come into force before April 1 would govern the appellants' licences and they are, therefore, liable to pay the fixed fees under the amended Rules. Licences are granted under Section 34 of the Act subject to the payment of such fees as the Financial Commissioner may direct. **The rules made under Section 59(d) authorize the imposition of additional fees and such authorization would operate on all licences to be effective thereafter.**

(emphasis supplied)

In **Delux Bar** (supra), IL-24 licensees challenged the enhancement of licence fee for various categories of licence brought in by an amendment to Rules. At the relevant time, the licence was issued for a block period of five years and every licensee was required to get the renewal every year after paying licence fee as prescribed. It was contended that during the block period of five years, there cannot be enhancement of licence fee and that the Government is entitled to collect licence fee as it existed at the time of grant of licence. It was also contended that enhancement will come into effect after the end of excise year and not during the currency of the licence during an excise/lease year. The first submission was rejected holding that even though the licence is issued for a block period of five years, the Government is entitled to amend the Rules enhancing the licence fee. This Court accepted other plea and held that increase in licence fee coming into force in the middle of excise year should not be applied to the licence in force at the beginning of the excise year. The relevant observations are as follows.

There is another weighty consideration as to why the increase in the licence fee coming into force in the middle of the excise year should not be applied to the licence in force at the beginning of the excise year. ... It should also be noticed that the amendment to the Schedule introduced by G.O.160 dated 3-3-1990 is not retrospective in operation as is the case with G.O.Ms.No.74, dated 1-2-1990 relating to licence fee on distilleries. At any rate, there is no clear language in the amended

provision which go to show that the enhancement will affect the existing licensees during the year itself. It cannot therefore be said that the increased quantum of licence fee brought about by the impugned G.O. should be projected into the Schedule of rates prevalent at the beginning of the year. Thus, viewed from any angle, we should uphold the contention of the learned counsel for the petitioners and hold that the enhanced licence-fee introduced by the impugned G.O. will only be operative after the end of the excise year i.e., after 30-9-1990 and for the excise year beginning from 1st October 1990, the licensees have to pay the increased licence fee ten days before the commencement of the excise year (1990-91) as enjoined by Rule 25.

In **Swagath v Excise Superintendent**^[9], IL-24 licensees questioned the demand for payment of differential licence fee for excise years 1991-1992 and 1992-1993 on the ground that such demand is beyond competence, when the licences were issued based on the population and also Schedule to the Rules. Subsequently, population figures as per 1991 Census were released during January, 1993 and after getting requisite information, Excise Superintendents issued impugned notices of demand. Placing reliance on the decision of **Delux Bar** (supra), it was contended that any increase in licence fee after commencement of excise year cannot be collected from the licensee. This Court accepted the plea and laid down as under.

In the absence of a provision in the rules enabling the Excise authorities to redetermine and revise the demand for licence fee and in the absence of any undertaking obtained from the petitioners on terms similar to the one obtained for the year 1992-93, I must hold that the respondents have no legal authority to demand the differential licence fee for the year 1991-92 at this point of time, more especially when the period of licence itself had run out. It may be noted that the licence granted for the block period of five years commencing from 1992-93 was either a fresh licence or a renewed licence. The currency of the previous licence in force upto 30-9-1992 had already expired by the date the impugned demand notices have been issued. **The need for a specific provision enabling the authorities to demand the licence fee in respect of an expired licence, is, therefore, more obvious and compelling. I have, therefore, no hesitation in striking down the demands made in respect of the year 1991-92 as being *ultra vires* the powers and authority confided to the respondents under the provisions of the Act and the Rules.**

(emphasis supplied)

Sri Rama Wines (supra) is a case where IL-24 licences were issued in Sirpur area. At that time, Kagaznagar Municipality had a population of 18,120. By Government order Sirpur was included in Kagaznagar Municipality, as a result, the population increased to 51,656. As per Schedule to the Rules, the higher slab of licence fee was demanded and notices were issued for payment of differential amount of licence fee. These notices were challenged before the High Court. This Court upheld the demand made by Government placing reliance on Sections 28 and 29 of the Excise Act and Rules 25 and 30 of the Rules. The Court also relied on undertaking given by some of the licensees wherein they agreed to pay the differential licence fee in case of merger of Sirpur area into Kagaznagar. The Division Bench of this Court placed reliance on **Swagath** (supra) and held that the counterpart agreement obliges the licensees to pay differential licence fee and that it can be enforced by the authorities.

In **Meka Nageswara Rao** (supra), petitioner obtained IL-24 licence on 14.10.1997 for a block period of five years. He did not carry on business beyond 30th September, 1990. The licensing authority issued show cause notice directing to pay amount towards differential licence fee for the period from 28.03.1988 to 30.09.1990 stating that Angalakuduru village, where the shop was licensed, falls within the limits of one kilometer due to inclusion of Sultanabad into Tenali Municipality. Petitioner submitted explanation, which was rejected. His appeal was also dismissed by Deputy Commissioner. Before the High Court, it was contended that the conditions of licence do not authorise collection of differential licence fee with retrospective effect. The Division Bench of this Court again placed reliance on counterpart agreement and upheld the demand for licence fee observing that though Angalakuduru was a Gram Panchayat with less population, subsequently by inclusion of

Sultanabad in Tenali Municipality, it came within belt of one kilometer from periphery of Municipality attracting higher slab of licence.

In **Tirumala Balaji Wines** (supra), a question arose as to whether excise authorities are bound to fix the licence fee taking into consideration population as per latest census ignoring any subsequent reduction of population of the area by reason of State action in re-defining units like village, Panchayats/revenue village. This Court while holding that licensing authority has no power or jurisdiction to deviate from statutory rule held that licence fee has to be collected as per census figures. It was also held that if during subsistence of IL-24 licence some areas merge in a larger area, the licensing authority may not increase the licence fee on that ground. Relevant observations are as under.

When the delegated legislation mandates to assess the population based on the latest census of a village/town/city, it is not permissible for any licensing authority or any excise official to assess the population in a different manner. **That subsequent to issue of licence or during the currency of the licence, the population of a village/town/city got altered or changed by reason of administrative action forming new units like villages/towns/cities is not a justification to fix population in an indiscriminate manner. If such power is conceded to the licensing authority, it would work adverse to the interest of the licensees. If during the currency of IL-24 licence, some new villages or panchayats merge in the village/town, the licensing authority may not increase the licence fee on that ground. That is not permissible. The Legislature i.e., delegated legislation has not left any discretion to the licensing authority.** The licence fee has to be prescribed by the licensing authority i.e., Commissioner of Excise relying only on the latest census figures and not otherwise. This Court, however, observes that if the State Government itself in exercise of delegated power expresses its desire specifically to take into consideration the subsequent changes which altered the population figures, it is permissible to the licensing authority to follow the same.

(emphasis supplied)

B.Venkataramana (supra) is a case arose under Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (2005 Rules). Petitioner therein was successful bidder for shop No.2 in Madhira village. After completing formalities, he sought approval for locating his shop, which was not given before the date of commencement of excise year i.e., 01.07.2005 as per 2005 Rules. He approached this Court by filing a writ petition, which was disposed of directing the authorities to consider his request. Four months thereafter licence was granted on 02.12.2005. He entered into counterpart agreement duly executing bank guarantee. When the authorities sought to enforce bank guarantee towards payment of licence fee for the period prior to granting licence, writ petition was filed seeking declaration that collection of fee for such period during which licence was not granted is illegal and arbitrary. This Court came to the conclusion that for the period during which the licensee was disabled to run the business, for reasons not attributed to him is entitled to remission of the proposed fee. Dealing with role of counterpart agreement as well as undertaking given by licensee, this Court held that such agreement is arbitrary and unconscionable and that undertaking taken by excise authorities falls outside the purview of law. The relevant observations are as under.

The averments that in the agreement entered into on 2.12.2005 the petitioner had undertaken to pay the entire lease amount of Rs.7,00,000/- and that he had executed a separate undertaking that he will not claim refund, do not dissuade me from holding that the action of the respondents in recovering the licence fee for the entire excise year is wholly arbitrary and unconscionable. A perusal of the counterpart agreement shows that it is a dotted-line agreement in which the blank columns were filled and at the marked portion, the petitioner signed. The Court can easily visualize the anxiety of the petitioner in simply signing the counterpart agreement at a stage when he was badly battered and bruised in his fight for just cause with the mighty State and the petitioner or for that matter anybody else in his place would have been in no position to resist signing such an agreement, lest, he would have been deprived of conducting the business even for the rest of the excise year which was fast coming to an end by 30.6.2006.

Similarly the alleged undertaking given by the petitioner is required to be

considered in the same vein. It is not the case of the respondents that either the Act or the Rules contemplate such an undertaking to be obtained from a licensee at the time of entering into the agreement and the act of the respondents in obtaining such an undertaking only exhibits their overzealous attitude and reinforces the view of the Court that the respondents have been wholly unfair to the petitioner. While the said undertaking falls wholly outside the purview of law governing the parties to the case, this document, does not enable the respondents to fasten any liability on the petitioner if he is not otherwise liable. In my considered view as the petitioner was unjustly prevented from commencing his business at the premises bearing Door No.1-198 on jejune grounds, he has no liability in law for payment of licence fee for the period from 1.7.2005 to 30.11.2005 when no licence was granted to him. This point is accordingly answered.

Conspectus of Case Law

There are three circumstances/situations when the excise authorities claimed differential licence fee on the ground that there was increase of licence fee. These are – (i) when the Government amended Rule 25 of the Rules and Schedule enhancing licence fee while the licences granted for an excise year/lease year were in force; (ii) claim for higher licence fee when a village/town or smaller urban area got merged into a larger urban area like Municipality, Municipal Corporation by reason of State action referable to either Municipalities Act or Corporations Act; and (iii) claim for higher licence fee (higher slab) when population of village/town/Municipality goes up as per decennial census figures released after grant of licence during excise/licence year.

In first category of cases, this Court held that the enhanced licence fee cannot be made applicable to a licensee during the currency of licence and that such enhanced licence fee can be leviable only from the succeeding excise year (see **Deluxe Bar** (supra)). With regard to second category of cases, this Court placing reliance on counterpart agreement held that when a smaller human habitat like village/town is merged in larger human habitat or urban area, the licensees are liable to pay the enhanced licence fee even if licences already granted are in force (see **Sri Rama Wines** (supra) and **Meka Nageswara Rao** (supra)). However, in this category of cases, as held in **Swagath** (supra), licensing authorities are not entitled to collect differential licence fee if no undertaking is obtained from the licensees. Even in regard to effect of undertaking, this Court in **B.Venkataramana** (supra) held that the undertaking, which is outside the purview of the Rules, is of no avail for collection of differential licence fee nor counterpart agreement can be basis for levying unauthorised licence fee. This only means that unless and until the claim for differential licence fee is backed by statutory rules, the licensing authorities cannot claim any higher slab of licence fee. With regard to third category of cases, in **Tirumala Balaji Wines** (supra), this Court held that higher slab of licence fee can be collected if there is increase in population as per latest census or by re-defining the units like villages/Panchayats/towns. But unless and until the State Government in exercise of delegated power expresses its desire specifically to take into consideration subsequent changes which altered population figures, it is not permissible for licensing authority to increase licence fee during lease year. That is to say, the licence fee has to be collected as it existed on the date of grant of licence, which means 1st April of the year.

Facts of the present cases

The cases on hand, however, present a different problem. In April, 2004, when the licences were granted to petitioners, Kadapa, Kakinada, Karimnagar, Nellore and Eluru were Municipalities constituted under Section 5 of the Municipalities Act. At relevant time shops of petitioners were outside belt of 2 KMs from periphery of these Municipalities. Subsequently, when Government issued notifications under Section 3 of the Corporations Act constituting these municipal areas as larger urban areas i.e., Municipal Corporation. the shops by legal fiction came under the purview of first proviso in column 3 of the Schedule under SI.No.8. This means that being situated within a belt of 5 KMs from the periphery of Municipal Corporation, the licence fee applicable will be at the same rate of fee of retail shop situated within the limits of such city/Corporation. Thus, while they were paying Rs.4.25 lakhs as

licence fee, it was enhanced to Rs.8.25 lakhs because the population of the respective city/Corporation is less than 3.00 lakhs, except in the case of Nellore Municipal Corporation. There is no dispute that at the time of grant of licence in April, 2004, all the shops of petitioners were situated outside belt of 2 KMs from periphery Municipality. Therefore, a lesser slab rate of licence fee was applied. When once the erstwhile Municipality was elevated to the status of Municipal Corporation, the places where the petitioners established IL-24 shops came within the belt of 5 KMs from the periphery of Municipal Corporation. In such a situation, enhanced licence fee cannot be applied. There are two reasons for this conclusion.

First reason is as follows. A perusal of Rules 24 and 25 of the Rules would show that annual licence fee for each licence as mentioned in Rule 23 of the Rules shall be amended from time to time as shown in Schedule to the 'Rules'. The 'Rules' mean, the 'Rules' made by the Government in exercise of their powers under Section 72 read with Section 28 and other applicable provisions of the Excise Act. It is admitted case that no amendment is made or brought out by the Government either to Rule 25 of the Rules or to Schedule especially SI.No.8 in the Schedule. If the Government amends Rules under different enactment or upgrades the status of urban area to a larger urban area under different enactment, the same does not amount to amending Indian Liquor and Foreign Liquor Rules under the Excise Act and therefore, the licensing authority do not have any power to apply licence fee at the rate of fee of retail shop situated in a Corporation area. The second reason is the following. As held by Division Bench of this Court in **Delux Bar** (supra), though the Government is entitled to amend the Rules during currency of licence granted under the Rules, such enhanced licence fee cannot be collected when the licence is in force. Licensing authority can collect fees that existed as on the date of granting licence and any subsequent increase in licence fee is not applicable to licences granted prior to amendment of the Rules enhancing licence fee. In these cases, by reason of notifications issued under Corporations Act, erstwhile Municipalities became Municipal Corporations. The same shall not have any effect on the licences granted or the licence fee paid by licensees. The first proviso under column 3 with reference to SI.No.8 of the Schedule provides that "licence fee in respect of retail shops constituted within the belt of 5 KMs". It only means that if a shop is situated in a Corporation area as on the date of grant of licence within belt of 5 KMs from the periphery, the first proviso shall be applicable. When the licences were granted to petitioners in April, 2004, admittedly all the shops were situated outside belt of 2 KMs from periphery of Municipality and therefore, licence fee as applicable to the shops in Corporation areas is not applicable.

The demand for differential licence fee in these cases is unauthorized and without jurisdiction. The petitioners in W.P.Nos.2522, 2628, 3873 and 4006 of 2005 obtained IL-24 licences in different villages, which were outside belt 2 KMs from periphery of Kadapa Municipality. Government issued notification under Section 3 of the Corporations Act vide their orders in G.O.Ms.No.481, dated 13.11.2004 constituting Kadapa Municipality into Kadapa Municipal Corporation. All these petitioners were issued impugned notices calling upon them to pay differential licence fee with effect from 13.11.2004. In W.P.Nos.4739, 4848, 6390 and 6667 of 2005, petitioners obtained licences for establishing retail shops outside belt area of 2 KMs from Kakinada Municipality, which was constituted as Corporation vide G.O.Ms.No.11 dated 06.01.2005. These petitioners were issued demand notices to pay differential fee with effect from 01.01.2005. Petitioners in W.P.Nos.6489 and 7072 of 2005 obtained licences for IL-24 shops outside belt of 2 KMs from the periphery of Nellore Municipality, which was constituted as a Municipal Corporation vide orders of the Government in G.O.Ms.No.419, dated 08.10.2004. These petitioners were issued impugned demand notices to pay differential licence fee with effect from 08.10.2004. Karimnagar Municipality was upgraded into Corporation by Government orders in G.O.Ms.No.300, dated 07.04.2004. The petitioners in W.P.Nos.8744, 11103 and 12771 of 2005 were issued impugned demand notices for differential licence fee with effect from 07.04.2004. They paid differential licence fee and filed writ petitions seeking a Mandamus for refund of licence fee. The petitioner in W.P.No.9629 of 2005, who obtained licence for IL-24 shop outside belt of 2 KMs from the periphery of Eluru Municipality was asked to pay differential licence fee with

effect from 07.04.2005 when the Government upgraded Eluru Municipality into Municipal Corporation vide orders in G.O.Ms.No.297, dated 07.04.2005.

In all the cases, licences were issued before the issue of Notification by the Government under Section 3 of Corporations Act. The notifications in respect of Karimnagar and Eluru Municipal Corporations were issued on 07.04.2005 after commencement of the lease year and therefore, it shall not have any effect for the reason that the licensing authority is empowered to grant licences and collect licence fee as per the Rules as they existed at the time of grant of licences. The Rules nowhere contemplate vesting the power on the licensing authority to enhance the licence fee contrary to Rule 25 of the Rules read with Schedule appended to the Rules as and when a smaller urban area is upgraded into larger urban area by the Government in exercise of their powers under Municipalities Act or Corporations Act, as the case may be.

In **Delux Bar** (supra) the challenge was to enhance licence fee while the licences were in vogue. A contention was raised that enhancement will come into effect only after the end of excise year. This plea found favour with the Division Bench. On an analysis of Rules 24 and 25 of the Rules, the Division Bench held that the increase in the licence fee cannot be retrospective unless there is a clear language in the amendment to the Rules. The reasoning of Division Bench in paragraphs 20 to 25 of the reported Judgment equally applies to the cases on hand.

In the result, for the above reasons, all the writ petitions are allowed without any order as to costs in the following manner.

- (1) W.P.Nos.2522, 2628, 3873 and 4006 of 2005 with reference to Kadapa Municipal Corporation; W.P.Nos.4739, 4848, 6390 and 6667 of 2005 with reference to Kakinada Municipal Corporation; W.P.Nos.6489 and 7072 of 2005 with reference to Nellore Municipal Corporation; W.P.No.9629 of 2005 with reference to Eluru Municipal Corporation; and W.P.Nos.8744 and 11103 of 2005 with reference to Karimnagar Municipal Corporation are allowed and the impugned orders are quashed; and
- (2) W.P.No.12771 of 2005 is allowed directing respondent, namely, Prohibition and Excise Superintendent, Karimnagar, to refund licence fee paid by petitioner towards differential licence fee consequent to Karimnagar Municipality being upgraded into Corporation with effect from 07.04.2005.

(V.V.S.RAO, J)

.11.2008

Note: LR copy be marked.

(By order)

pln

[1] 1992 (2) ALT 314 (DB) = 1992 (2) APLJ 14 (DB)

[2] 1997 (6) ALT 788 (DB)

[3] 1998 (3) ALD 159 (DB)

[4] 2003 (5) ALD 479

[5] 2008 (1) ALT 578

[6] (2004) 11 SCC 26

[7] (2006) 5 SCC 702 = AIR 2006 SC 2652

[8] AIR 1975 SC 1121

[9] 1993 (2) An.W.R. 601